Nos. 17-1717 and 18-18

IN THE

Supreme Court of the United States

THE AMERICAN LEGION, *et al.*,
Petitioners,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,
Respondents.

MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
Petitioner,

v.

AMERICAN HUMANIST ASSOCIATION, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF MARYLAND ELECTED OFFICIALS AND PRINCE GEORGE'S COUNTY AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

THOMAS R. MCCARTHY
Counsel of Record
JEFFREY M. HARRIS
CONSOVOY MCCARTHY PARK PLLC
ANTONIN SCALIA LAW SCHOOL
SUPREME COURT CLINIC
3033 Wilson Boulevard, Suite 700
Arlington, VA 22201
(703) 243-9423
tom@consovoymccarthy.com

Counsel for Amici Curiae

December 26, 2018

285749

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 5

ARGUMENT 7

I. The Peace Cross Is A Prominent Shared Civic Space Central To The Communal Life Of Bladensburg And Prince George's County 8

A. The Peace Cross Provides a Shared Space for the Community to Unite to Commemorate Independence Day, Memorial Day, and Veterans Day 9

B. The Peace Cross Provides a Place for Citizens to Gather After Major Tragedies. 11

C. The Peace Cross Provides a Prominent Geographic Reference Point for Bladensburg Residents and Visitors 12

Table of Contents

Page

II. The History Of The Peace Cross Is Important To The Communal Identity Of Bladensburg And Prince George's County 13

III. The Peace Cross Is An Architecturally Significant Monument And Removing It Would Deprive Bladensburg And Prince George's County Of A Historic Artistic Creation 15

CONCLUSION 19

TABLE OF CITED AUTHORITIES

Page

CASES

Lynch v. Donnelly,
465 U.S. 668 (1984) 7

McCreary Cty. v. ACLU of Ky.,
545 U.S. 844 (2005) 7

Salazar v. Buono,
559 U.S. 700 (2010) 7, 8

Van Orden v. Perry,
545 U.S. 677 (2005) 7

STATUTES AND OTHER AUTHORITIES

Sup. Ct. R. 37.6 1

Area Commemorations of Sept. 11, Washington
Post (Sept. 10, 2004) 11

County to erect cross for heroes, Washington
Times (June 9, 1919) 13

D'Vera Cohn, *A Quiet But Vital Earth Day*,
Washington Post (Apr. 18, 1991) 12

Jackie Spinner, *Hope Floats in Prince George's
As People's Harbor Is Shaped*, Washington
Post (Nov. 29, 2007) 12

Cited Authorities

Page

Jeffrey Lyles, *Peace Cross Used to Celebrate Veterans, Town*, Gazette Community News (July 5, 2001) 14, 15

Legion Dedicates Bladensburg War Memorial Cross, Washington Post (July 13, 1925) 14

Lori Sears, *A day for the flag*, Baltimore Sun (June 12, 2003) 12

Maryland Historical Trust, Maryland Inventory of Historic Properties Form (Inventory No. PG: 69-005-16) 17

Michael E. Ruane, *Memories, Grief Endure Across Region, Services Recall Losses, Pay Tribute to Victims*, Washington Post (Sept. 12, 2006) 11

Michelle Betton, *County Dedicates Memorial to 9/11 Dead in Bladensburg*, Washington Post (Sept. 21, 2006) 11

Portia Williams, *City and Town Actions*, Washington Post (July 2, 1987) 9, 10

Reid Temple Grows Despite Floods, Repairs, Washington Times (Dec. 17, 2001) 13

Richard Wilson, *The Bladensburg War Memorials*, Prince George's Magazine, Fall 1983 ..... 13, 14

Cited Authorities

Page

Robert E. Pierre, ***Port Towns' Past Serving as Anchor for Communities' Future,*** Washington Post (July 6, 1997) 15

Ron Shaffer, ***Getting Somewhere Faster,*** Washington Post (Apr. 22, 1999) 12

Sara Wildberger, ***Cruising for a Good Cause on the Anacostia,*** Washington Post (May 30, 2002) 12

Susan Gervasi, ***Railroad Bridge Project Could Cost $61 Million,*** Washington Post (Dec. 18, 2003) 12

Tony Glaros, ***Where We Live,*** Washington Post (Aug. 22, 2014).....12

William J. Ford, ***Prince George's Event Honors County's Service Members on Veterans Day,*** Washington Informer (Nov. 17, 2016) 9, 10

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are Maryland state elected officials, who have a powerful interest in this case because of the importance of the Peace Cross to the local community, and Prince George's County, Maryland, where the Peace Cross has stood since it was constructed and dedicated nearly a century ago.

Amicus Prince George's County was founded in 1696 and its citizens have served in every United States war, foreign and domestic. Because many of its citizens, both past and present, are veterans, and because the Peace Cross has stood as a landmark for more than one quarter of the County's history as a World War I memorial, Prince George's County has a strong interest in the preservation of the Peace Cross at its current location.

Amici Maryland state elected officials are led by Jim Rosapepe. Senator Rosapepe has been a state senator representing Prince George's County—where the Peace Cross is located—since 2007. He is the past chair of the Prince George's Senate delegation and has strong ties to the area near the Peace Cross. He previously served in the Maryland House of Delegates from 1987-1997 and on the Board of Regents of the University of Maryland system from 2001-2006.

---

1. Pursuant to this Court's Rule 37.6, counsel for *amici* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici* and their counsel has made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

Douglas J. J. Peters is a state senator from Prince George's County who has represented Maryland's 23rd Legislative District since 2007. He currently serves as Chair of the Capital Budget Subcommittee and was the Senate Chair of the Veterans Caucus from 2011 to 2017. Senator Peters served as a Captain in the U.S. Army Reserve and was awarded a Bronze Star Medal for meritorious service during Operation Desert Storm. Senator Peters has served as the Post Commander of both the American Legion and Veterans of Foreign Wars.

Thomas V. ("Mike") Miller, Jr. is the President of the Maryland Senate and has represented Prince George's County, where the Peace Cross is located, since 1971. He has served in the Maryland Senate since 1975, and previously served in the Maryland House of Delegates from 1971-1975.

Victor Ramirez is a state senator representing Bladensburg, where the Peace Cross is located. He is an experienced trial attorney and previously served in the Maryland House of Delegates from 2003-2011. He is the principal owner of the Law Office of Victor R. Ramirez, LLC, practicing criminal and civil rights law for the last 17 years.

William C. Smith, Jr. is a state senator representing Montgomery County since 2016. He currently serves as Chair of the Senate Veterans Caucus and as Vice-Chair of the Senate Judicial Proceedings Committee. He also serves as a Lieutenant in the United States Naval Reserve. He previously served in the Maryland House of Delegates from 2015-2016.

Ulysses Currie is a state senator from Prince George's County who has represented Maryland's 25th Legislative District since 1995. He served in the U.S. Army from 1960-63 and has been a member of the Maryland Veterans Caucus since 2004. He previously served as Chair of the Senate Budget and Taxation Committee from 2002-2012 and in the Maryland House of Delegates from 1987-1995.

Joanne C. Benson is a state senator who has represented Prince George's County since 2011. She currently serves as Chair of the Prince George's Senate Delegation and the Senate Rules Committee. She previously served in the Maryland House of Delegates from 1991-2011.

Katherine A. Klausmeier is a state senator representing Baltimore County since 2003. She currently serves as the President Pro Tem of the Maryland Senate and previously served in the Maryland House of Delegates from 1995-2003.

Senator Bryan W. Simonaire has been a state senator representing District 31 since 2007. The Senator is a member of the Maryland Veterans Caucus, Joint Committee on the Chesapeake and Atlantic Bays Critical Area, the Education, Health, and Environmental Affairs Committee, and the Maryland Cybersecurity Council. Senator Simonaire has passed legislation to assist veterans struggling with PTSD and to require a more accurate accounting of veteran suicide rates. As a civilian, Senator Simonaire provided technical overseas support to our military.

Justin Ready has been a state senator representing Carroll County since 2015, where he serves on the Judicial Proceedings Committee. He previously served in the Maryland House of Delegates from 2011-2015.

James "Ed" DeGrange, Sr. was elected to the Senate of Maryland in 1998 to represent the 32nd Legislative District of Anne Arundel County. As Senator he serves as a member of the Budget and Taxation Committee (chairing its Capital Budget as well as its Public Safety, Transportation and Environment Subcommittees). He also serves as a member of the Senate Rules Committee and the Senate Executive Nominations Committee. Additionally, Senator DeGrange serves as the Senate Chairman of the Joint Committee on Legislative Ethics.

Gail Bates is a state senator who has represented Carroll and Howard Counties since 2015, serving on the Education, Health, and Environmental Affairs Committee. She previously served in the Maryland House of Delegates from 2002-2014.

Steve Waugh has over 30 years of leadership as a decorated career Marine Corps combat aviator, an acquisition professional at the Naval Air systems Command, a senior professional engineer with the Johns Hopkins University Applied Physics Laboratory, and a Maryland State Senator.

As explained below, if the Peace Cross were to be disfigured or demolished, *amici*'s constituents will lose a tremendously important symbol of the community that is currently a gathering point for citizens and is also historically and architecturally significant.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners ably explain why the Peace Cross—a 93-year-old memorial to the 49 men of Prince George's County, Maryland, who died in World War I—is constitutional under any of the various tests applied by this Court in Establishment Clause cases. *See* Brief for the American Legion Petitioners ("American Legion Br.") at 12; Brief for Petitioner Maryland-National Capital Park and Planning Commission ("Commission Br.") at 22. *Amici* agree with Petitioners on the law but write separately to elaborate on the circumstances and context surrounding the Peace Cross and its present and historical significance to the local community.

The Peace Cross is an important public landmark that is central to the civic life of Bladensburg and Prince George's County. Since its dedication in 1925, the Peace Cross has functioned as a shared civic space—a place for local residents to come together to honor American veterans and work together for the common good. For decades, it has been the site of ceremonies celebrating Independence Day, Memorial Day, and Veterans Day; it is also where citizens have gathered after tragedies such as the September 11th terrorist attacks. The events held at the memorial are not in any way partisan or sectarian, but are instead an opportunity for the entire community to come together to celebrate or mourn. The Fourth Circuit's characterization of the Peace Cross as a predominantly religious symbol that somehow endorses certain religious views over others is utterly unrecognizable to anyone who is familiar with its actual role in the community.

The history and architecture of the Peace Cross are sources of pride within the local community. Town leaders chose to locate the monument on a prominent piece of land in what was then the center of town to honor soldiers from Prince George's County who died in World War I. The effort to build this memorial nearly failed several times due to lack of funding, but the people redoubled their efforts to ensure a proper tribute to the region's fallen soldiers. This history continues to be passed down today to school groups and others as a source of civic pride.

Finally, any order to remove or disfigure the Peace Cross would strip Prince George's County of an architecturally significant landmark. The memorial was designed by John Joseph Earley, a prominent D.C. architect who is known for his work across the country. Earley pioneered the use of concrete in architecture and helped achieve breakthroughs in durability and the use of colors and textures. The Peace Cross is a leading example of Earley's innovative techniques, and also reflects a new type of memorial design that became prominent after World War I. Indeed, its minimalist design (which differs from the intricate detail of many earlier memorials) foreshadowed the art deco movement of the decades that followed. It would be a great loss to architectural history if this important piece were removed or disfigured based on a misguided application of the Establishment Clause.

* * *

In short, the Peace Cross provides the community with a shared civic space in which citizens can come together to celebrate special occasions, honor fallen soldiers, and work together for the common good. Destroying or removing

this historically and architecturally significant memorial would not further unity among citizens of different religious creeds; to the contrary, it would deprive the local community of an invaluable asset that has been a source of civic pride for decades.

ARGUMENT

As Petitioner the American Legion has explained, this Court's various tests for analyzing Establishment Clause questions all contain a "common thread"—"[a] government's use of religious imagery in a way consistent with the Nation's historical traditions will not run afoul of the Establishment Clause absent a showing that the government was exploiting the tradition to coerce religious belief or observance by nonadherents." American Legion Pet. for Writ of Certiorari at 4. Accordingly, the government's use of religious imagery must be evaluated in the "proper context" of its history, purpose, and use. *Lynch v. Donnelly*, 465 U.S. 668, 680 (1984); *see also Salazar v. Buono*, 559 U.S. 700, 716 (2010) (considering "the historical meaning that the cross had attained" in determining whether it violated the Establishment Clause) (plurality opinion); *McCreary Cty. v. ACLU of Ky.*, 545 U.S. 844, 866 (2005) (considering "history and context") (quotation omitted); *Van Orden v. Perry*, 545 U.S. 677, 702-03 (2005) (Breyer, J., concurring in judgment) (fact that it had been 40 years without a legal challenge to a Ten Commandments display "suggest[s] that the public visiting the [surrounding] grounds has considered the religious aspect of the tablets' message as part of what is a broader moral and historical message reflective of a cultural heritage").

This inquiry reflects the well-accepted principle that the Establishment Clause "does not oblige government to avoid any public acknowledgment of religion's role in society," nor "require eradication of all religious symbols in the public realm." *Salazar*, 559 U.S. at 718-19 (plurality opinion). And it is illustrated in the Court's repeated affirmation of the constitutionality of displays that use religious symbols to convey a nonsectarian message—"including the crèche in *Lynch*, the menorah in [*County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573 (1989)], and the Ten Commandments in *Van Orden*." Commission Br. at 25.

As explained more fully below, the purpose, history, and use of the Peace Cross make clear that it is an important historical landmark that is central to the community and civic life of Bladensburg and Prince George's County. Commission Br. at 2 ("Its context and history make plain that it was intended to serve—and, for 93 years, *has* served—as a secular memorial to the war dead."). The context and circumstances surrounding the government's ownership of the Peace Cross thus indicate "that the State itself intended the ... nonreligious aspects of the [Peace Cross's] message to predominate." *Id.* at 701 (Breyer, J.).

I. The Peace Cross Is A Prominent Shared Civic Space Central To The Communal Life Of Bladensburg And Prince George's County.

For nearly a century, the Peace Cross has stood at the center of civic life in Bladensburg and Prince George's County as a shared public space for commemoration and reflection. Citizens from diverse cultural backgrounds and

religious traditions have long gathered at the memorial site to celebrate their shared civil values, honor fallen veterans, and work together for the common good. Any suggestion that the Peace Cross serves a predominantly religious function simply disregards decades of history of how the local community views this landmark.

A. The Peace Cross Provides a Shared Space for the Community to Unite to Commemorate Independence Day, Memorial Day, and Veterans Day.

The Peace Cross is a natural gathering place for local citizens from the surrounding communities to come together to honor veterans and members of the U.S. Armed Forces. For decades, the Peace Cross has been the site of Independence Day, Memorial Day, and Veterans Day celebrations for "[o]fficials and residents of the towns that border" it, including "Bladensburg, Colmar Manor and Cottage City." William J. Ford, *Prince George's Event Honors County's Service Members on Veterans Day*, Washington Informer (Nov. 17, 2016); *see also* Portia Williams, *City and Town Actions*, Washington Post (July 2, 1987).

Citizens of diverse cultural backgrounds and religious traditions come together at these events to commemorate American servicemembers, especially those who "gave the greatest sacrifice" in our nation's struggles for the preservation of freedom. The observances are not in any way partisan or parochial. They do not honor veterans of a particular race or creed, but rather "all that serve." JA 547, 544 (Memorial Day 2014 program). As one veteran explained, "[i]t's wonderful to be able to come here each

year and ... give remembrance and thanks to those who served .... It's not a matter that I'm an African-American, but we are all Americans in this country." William J. Ford, *Prince George's Event Honors County's Service Members on Veterans Day*, Washington Informer (Nov. 17, 2016).

The Independence Day, Memorial Day, and Veterans Day events at the Peace Cross have typically featured ceremonies honoring the American flag, speeches by the Mayor of Bladensburg, placement of floral wreaths around the monument, and performances of the national anthem and taps. JA 487, 545, 549, 557. The events are often followed by a community lunch at the Bladensburg Fire Department. *See* JA 608, 612; Portia Williams, *City and Town Actions*, Washington Post (July 2, 1987). The programs and invitations are colored red, white, and blue; decorated with flags, stars, and bald eagles; and sprinkled with tributes to the various branches of the U.S. Armed Forces. *See* JA 541-610.

In stark contrast to the way Respondents have characterized the Peace Cross, the local citizens who gather at these annual events have never viewed the monument as a sectarian symbol or a tool for proselytization. In the words of a local American Legion leader, the Peace Cross is a memorial to Americans of "all shapes and sizes," of all religious creeds and none, who fought for their nation in battle. *See* William J. Ford, *Prince George's Event Honors County's Service Members on Veterans Day*, Washington Informer (Nov. 17, 2016). Simply put, the local community views the Peace Cross as a symbol of unity, not division.

Ordering the demolition or disfigurement of the Peace Cross thus would have precisely the opposite effect

of what the Founders intended in making America a nation where bonds of citizenship transcend differences of religion. It would deprive the citizens of Bladensburg and the surrounding areas of the shared space in which they gather to celebrate the civic commitments that unite them despite their political and religious differences. And it would disrespect the men and women whose memories the Peace Cross was built to commemorate. The decision below bears no resemblance to the way local citizens view the Peace Cross, and this Court should reverse it to prevent a wholly unwarranted blow to the civic life of Bladensburg and the surrounding areas.

B. The Peace Cross Provides a Place for Citizens to Gather After Major Tragedies.

The Peace Cross has been used for more than just celebrations of national holidays. The community has also turned to the Peace Cross on many other occasions as a place to come together for the common good in the wake of local and national tragedies.

For example, in the years following the terrorist attacks of September 11, 2001, community members often gathered near the Cross for candlelight vigils and other solemn ceremonies each September to honor the dead. *See Area Commemorations of Sept. 11*, Washington Post (Sept. 10, 2004); Michael E. Ruane, *Memories, Grief Endure Across Region, Services Recall Losses, Pay Tribute to Victims*, Washington Post (Sept. 12, 2006). Eventually, in 2006, local citizens placed a new monument near the Peace Cross to honor citizens of Prince George's County who died in the attacks. Michelle Betton, *County Dedicates Memorial to 9/11 Dead in Bladensburg*, Washington Post (Sept. 21, 2006).

C. The Peace Cross Provides a Prominent Geographic Reference Point for Bladensburg Residents and Visitors.

Residents of Prince George's County have also used the Peace Cross for decades as a prominent point of geographical orientation. Though more of a functional purpose, the use of the cross as a geographical reference point is no less vital to the local community.

Directions in and around the local area are often given by reference to the location of the Peace Cross. *See, e.g.*, Lori Sears, *A day for the flag*, Baltimore Sun (June 12, 2003) (using the cross to identify part of a local 10K race route); Sara Wildberger, *Cruising for a Good Cause on the Anacostia*, Washington Post (May 30, 2002) (using the cross to identify the location of the Bladensburg Waterfront Park); Ron Shaffer, *Getting Somewhere Faster*, Washington Post (Apr. 22, 1999) (using the cross as a key marker in an alternative vehicle route identified to avoid traffic); D'Vera Cohn, *A Quiet But Vital Earth Day*, Washington Post (Apr. 18, 1991) (using the cross to identify the location of a public canoe trip on the Anacostia river).

Similarly, local news outlets, when reporting on a nearby occurrence or crime, will often locate the newsworthy event relative to the Peace Cross. *See, e.g.*, Tony Glaros, *Where We Live*, Washington Post (Aug. 22, 2014) (identifying a local park); Jackie Spinner, *Hope Floats in Prince George's As People's Harbor Is Shaped*, Washington Post (Nov. 29, 2007) (identifying new residential and commercial neighborhood); Susan Gervasi, *Railroad Bridge Project Could Cost $61 Million*, Washington Post (Dec. 18, 2003) (identifying proposed

railroad bridge); *Reid Temple Grows Despite Floods, Repairs*, Washington Times (Dec. 17, 2001) (identifying local African Methodist Episcopal Church).

In short, in addition to eliminating an important shared civic space, removing the Peace Cross would strip the area of a monument frequently used by locals and visitors to orient themselves and identify the location of notable events in the community.

II. The History Of The Peace Cross Is Important To The Communal Identity Of Bladensburg And Prince George's County.

Bladensburg's rich history as a port town on the Anacostia River stretches back to the colonial era, but one of the town's finest civic moments came in 1919, in the wake of a cataclysmic war. It is a moment that continues to resonate with members of the community as a testament to who they are and, despite their differences, what they value most. *See* Richard Wilson, *The Bladensburg War Memorials*, Prince George's Magazine, Fall 1983 (JA 986).

That year, a group of local leaders resolved to build a memorial to honor the men from Prince George's County who died in World War I. They formed a committee to raise the necessary funds. And they soon picked the perfect spot for their memorial, the former Bladensburg Port landing—the center of the town's economic and social life for much of the nineteenth century. *See County to erect cross for heroes*, Washington Times (June 9, 1919).

Townspeople gathered in late September 1919 to formally dedicate the site. Mrs. William Farmer and Mrs.

Martin Redman—the mothers of the first soldier and sailor to die from Prince George's County—spoke at the groundbreaking ceremony. So, too, did the Secretary of the Navy. *See* Wilson, *The Bladensburg War Memorials.* Within a year, the Committee—which by then consisted mostly of mothers of fallen soldiers—had raised more than fifteen hundred dollars. Yet it was not enough to finish the memorial, and construction had halted completely by 1922. *See* American Legion Br. at 7; Commission Br. at 11.

Instead of abandoning the memorial, however, the people of Bladensburg redoubled their efforts. The local American Legion post took control of the site and accepted the solemn responsibility of completing the project. American Legion at 7. It launched a major fundraising campaign, and by 1925 its members had secured the rest of the $10,000 needed to finish the memorial. The final dedication was held in July 12, 1925. *See Legion Dedicates Bladensburg War Memorial Cross*, Washington Post (July 13, 1925) (JA 1371); American Legion Br. at 8.

For the past century, members of the local community have been inspired by the story of the memorial's origins—a story they often retell as a source of civil pride. Several decades after the dedication of the Peace Cross, one local writer emphasized that the story of the memorial's creation revealed the "voluntary spirit" and "personal fortitude" of the people of Bladensburg. *See* Wilson, *The Bladensburg War Memorials.* More recently, Marion Hoffman, a 22-year veteran of the Bladensburg city council, said that the monument "has always denoted Bladensburg." Jeffrey Lyles, *Peace Cross Used to Celebrate Veterans, Town*, Gazette Community News (July 5, 2001). She further explained that the construction

and preservation of the cross well illustrated the city's "hope for peace and the sacrifices made from all wars." *Id.*

Not surprisingly, local schools have long taken students to the memorial site on field trips to learn the story of its construction. *See, e.g.*, Robert E. Pierre, *Port Towns' Past Serving as Anchor for Communities' Future*, Washington Post (July 6, 1997); Jeffrey Lyles, *Peace Cross Used to Celebrate Veterans, Town*, Gazette Community News (July 5, 2001). On those visits, students are taught the history of the Peace Cross as an important part of the "the area's rich history." *Id.*

Put simply, nearly a century after its construction, the Peace Cross is no longer just a memorial to the fallen soldiers of the First World War. Its rich history is also a source of civic pride and a testament to the character of the people of Bladensburg, for reasons that have absolutely nothing to do with a religious message or proselytization.

III. The Peace Cross Is An Architecturally Significant Monument And Removing It Would Deprive Bladensburg And Prince George's County Of A Historic Artistic Creation.

Not only does the Peace Cross play an important role in the local community but it is also significant from an architectural perspective. This is reflected by the importance of the architect who designed it, the innovative method of its construction, and its place in the history of monuments and architecture.

The Peace Cross was designed by John Joseph Earley, a prominent architect from the Washington D.C. area.

Earley is known for his works such as Meridian Park in Washington, D.C., *see* https://tinyurl.com/yavtn4xz, the Baha'i House of Worship in Wilmette Illinois, *see* https://tinyurl.com/yd9ztzry, and the Pantheon replica in Nashville, *see* https://www.loc.gov/item/tn0450/. Earley's continuing influence is reflected in the fact that his drawings and plans are now held in the Smithsonian Archives of American Art, *see* https://tinyurl.com/yb9r3bxm, and his office and studio in the Foggy Bottom neighborhood in Washington D.C. is a National Historic Landmark, *see* https://tinyurl.com/ybqv365y.

Earley's historical importance stems from his unique use of concrete that he dubbed "architectural concrete." *See* "American Concrete Institute Celebrates 100 Years of John Joseph Earley and the Earley Studio in Washington D.C," https://tinyurl.com/yalsenc7.

Before Earley's innovations, architects were skeptical that concrete could be an aesthetic medium. *See* Lori Renée Aument, Experimentation in concrete: John J. Earley at Meridian Hill Park, Washington, D.C.: history, technology, and characterization of exposed aggregate concrete, at 9, *see* https://tinyurl.com/ydhspgqm.

Despite this skepticism, Earley and other architects continued to experiment with concrete because of its versatility and durability. *Id.* at 17-20. For example, Earley pioneered the use of exposed color aggregates, whereby the aggregate part of the concrete mix would form the exterior of the material. *Id.* at 18-21. Using exposed aggregates allowed for the incorporation of different colors and textures and, unlike stucco or painting, did not involve adding a separate material

to change the concrete's appearance. *See generally id.* Using this technique, Earley was able to maintain the integrity of the medium of concrete and boost its aesthetic value while still taking advantage of concrete's inherent positive qualities like durability. Because of his pioneering work in this medium, Earley is known as the "Man Who Made Concrete Beautiful." Maryland Historical Trust, Maryland Inventory of Historic Properties Form (Inventory No. PG: 69-005-16) ("Peace Cross Historical Inventory") at 5, *available at* https://bit.ly/2SlIBSo.

The Peace Cross is a leading example of Earley's "architectural concrete" technique. *Id.* The use of concrete allowed the cross to be built both durably and cost-effectively, thereby facilitating its prominent size. Moreover, the use of exposed colored aggregates gives the Peace Cross its aesthetic value. *Id.* at 2-5; JA 913-14. As an early example of Earley's use of this technique, the Peace Cross pre-dates some of his prominent work mentioned above and shows Earley's development of the technique. And, by using this technique for a memorial, Earley was able to demonstrate that concrete could compete as a medium in a setting where other, more expensive and less durable materials had been preferred at the time.

Aside from its significance as an example of Earley's work, the Peace Cross is also a prominent example of a post-World War I memorial. Before World War I, war memorials often depicted individual soldiers. Those memorials would typically feature a particular leader, rather than honoring servicemen more broadly. War Memorials Trust, History of War Memorials, available at https://bit.ly/2V8q0uY. After World War I, memorials became less individualized, and crosses gained prominence

as a symbol of fallen soldiers. Commission Br. at 4-7. The Peace Cross is firmly rooted in this architectural tradition, and well illustrates the more general architectural trends of the time. Its relative minimalism and emphasis on size and clarity of message, as opposed to detail and complexity, foreshadow the art deco and art modern movements of the decades that followed. JA 913-14; Commission Br. at 42.

In sum, the Peace Cross is significant architecturally both because of the prominence of its designer and because it is a well-maintained example of an architectural style rooted in the context of its construction. The destruction or alteration of the Peace Cross would deprive Prince George's County, and the country, of an important example of a prominent architect's work and of a clear window into the architectural trends of the early 1920s.

CONCLUSION

Amici curiae respectfully request that the Court reverse the judgment of the Fourth Circuit.

Respectfully submitted,

THOMAS R. MCCARTHY
Counsel of Record
JEFFREY M. HARRIS
CONSOVOY MCCARTHY PARK PLLC
ANTONIN SCALIA LAW SCHOOL
SUPREME COURT CLINIC
3033 Wilson Boulevard, Suite 700
Arlington, VA 22201
(703) 243-9423
tom@consovoymccarthy.com

Counsel for Amici Curiae